No. ____

IN THE

Supreme Court of the United States

October Term, 1982

JAMES M. RUTLEDGE,

Petitioner,

vs.

SMALL BUSINESS ADMINISTRATION

Respondent.

APPENDIX
TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Edward B. Cloutman, III
MULLINAX, WELLS, BAAB
& CLOUTMAN, P.C.
8204 Elmbrook Drive, Suite 200
Dallas, Texas 75247
(214) 630-3672

Counsel for Petitioner

APPENDIX

Table of Contents

	Page
ITEM ONE — Memorandum Order of the United States District Court for the Northern District of Texas, Dallas Division, rendered May 13, 1981	3
ITEM TWO — Order of May 13, 1981, denying Motion for New Trial	7
ITEM THREE — Order of May 13, 1981, referring request to proceed *in forma pauperis* on appeal to the United States Magistrate	8
ITEM FOUR — Order of August 7, 1981, denying application for leave to appeal *in forma pauperis* and denying application for appointment of counsel	10
ITEM FIVE — Opinion of the Fifth Circuit of January 29, 1982, affirming District Court decision	11
ITEM SIX — Opinion of the Fifth Circuit of March 5, 1982, denying suggestion for rehearing *en banc*	12
ITEM SEVEN — Letter dated March 15, 1982, transmitting certified copy of Rule 21 Decision and original record on appeal or review	14
ITEM EIGHT — 28 U.S.C. §1343	16
ITEM NINE — 42 U.S.C. §1981	17

U. S. District Court
Northern District of Texas
FILED
MAY 15, 1981
JOSEPH McELROY JR., Clerk
By C. Littman, Deputy

ITEM 1

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

JAMES M. RUTLEDGE,
Plaintiff,

vs. CA 3-79-0780-R

SMALL BUSINESS ADMINISTRATION
Defendant.

MEMORANDUM ORDER

On March 9, 1981, summary judgment was granted in favor of defendant Small Business Administration ("SBA") by the attached Memorandum Opinion and final Order — which found that the *pro se* plaintiff James Rutledge, had failed to allege ply with two Court Orders directing him to allege specific facts in support of his conclusory allegations of racial discrimination under 42 U.S.C. §1981; that the pleadings and affidavits on file had been closely examined with sensitivity to the problems of a *pro se* plaintiff; but that, based upon a careful study of the pleadings and exhaustive affidavits, there was no genuine issue of fact and defendant was entitled to judgment as a matter of law.

On March 13, 1981, the plaintiff filed a "Notice of Appeal," accompanied by "Plaintiff Statements of Undisputed Facts." Because the plaintiff is a

pro se litigant, the Court has considered the plaintiff's "Notice of Appeal" as a timely filed Motion for New Trial -- and deems the unsworn "Plaintiff Statements of Undisputed Facts" to have been sworn to by the plaintiff for all purposes. After a careful consideration of this statement of facts, the Court again finds that the plaintiff has failed to raise any genuine fact issue concerning his claim of racial discrimination and that the Motion for New Trial should be denied.

Plaintiff's facts #8-19 assert that the SBA's Office initially sought contract support for his first Section 8(a) application at an amount which it knew at the time was below the level of support then available for a wholesale dealer in the specified paper products; and that his first application was, in fact, not approved because support at this low level was not available under existing procurement requirements.

The affidavits of SBA personnel and the General Services Administration ("GSA") "Solicitation, Offer and Award" forms filed by the plaintiff clearly establish that the plaintiff's company was too small to qualify for a higher level of support. The GSA procurement requirements which were established for awards to small businesses specified that they were applicable to businesses with 750 employees. The plaintiff's application reveals that his company had only one employee. The plaintiff has raised no fact issue in support of his discrimination claim.

Plaintiff's facts #20-22 establish that the plaintiff himself traveled to Washington, D.C. to locate Section 8(a) contract support because he believed the Dallas SBA Office was not diligently searching for support for a paper *dealer* of his type and size; that the plaintiff did in fact locate contract support from GSA for a paper *manufacturing* operation; and that solely as a result of the plaintiff's time and effort, the Dallas SBA Office learned that contract support was available for a paper converting operation. Again, this fails to raise a fact issue in support of a claim of racial discrimination.

It is undisputed that the plaintiff's application which was pending in the Dallas SBA Office at this time requested support for the Nile Papyrus Company, a wholesale *dealer* in paper products *with one* employee. The support which the plaintiff located was for a paper *manufacturer*. Nevertheless, within three days after the Dallas Office learned of possible support for a manufacturer, representatives from that office contacted and met with the plaintiff to discuss the feasibility of the plaintiff's operating a paper converting business.

Plaintiff's facts #23-24 merely establish that in order to assist him in completing the required business plan information to qualify for support as a paper manufacturer, the plaintiff felt he was entitled — at SBA expense — to the services of a private consulting firm other than the two or more consulting firms to whom the SBA paid over $2,000 to assist the plaintiff.

Based on the above, the Court finds that the plaintiff's Motion for New Trial fails to raise any genuine issue of material fact concerning his claim of racial discrimination and, therefore, the Motion is denied.

Appointment of Counsel

In its March 9 Opinion, this Court found that the plaintiff's request for appointment of counsel should be denied because the plaintiff's claims lacked sufficient merit. The plaintiff has renewed his request for appointment of counsel.

The Court has carefully considered the merits of the plaintiff's claim in light of the additional facts supplied by the plaintiff in his Motion for New Trial, and remains of the opinion that the "proper exercise of this Court's discretion requires that the request for appointment of counsel be denied" due to the lack of merit of the plaintiff's claim.

SIGNED this 13th day of May, 1981.

JERRY BUCHMEYER
United States District Judge

U. S. District Court
Northern District of Texas
FILED
MAY 13, 1981
JOSEPH McELROY JR., Clerk
By C. Linman, Deputy

ITEM 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAMES M. RUTLEDGE,
Plaintiff,

vs. CA 3-79-0780-R

SMALL BUSINESS ADMINISTRATION
Defendant.

ORDER

On March 9, 1981, a final Order was entered in this action granting summary judgment in favor of the defendant, Small Business Administration. On March 13, 1981, plaintiff James Rutledge, *pro se,* filed a "Notice of Appeal" from that final Order.

It is hereby ORDERED that the plaintiff's "Notice of Appeal" will be considered by this Court as a Motion for New Trial, timely filed under Rule 59, F.R.C.P., but that this Motion for New Trial is denied, in accordance with the attached Memorandum Opinion.

SIGNED this 13th day of May, 1981.

JERRY BUCHMEYER
United States District Judge

U. S. District Court
Northern District of Texas
FILED
MAY 18, 1981
JOSEPH McELROY JR., Clerk
By C. Littman, Deputy

ITEM 3

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

JAMES M. RUTLEDGE,
Plaintiff,

vs. CA 3-79-0780-R

SMALL BUSINESS ADMINISTRATION
Defendant.

ORDER

On March 13, 1981, plaintiff James Rutledge, *pro se,* filed a "Notice of Appeal" from this Court's final order of March 9, 1981, granting summary judgment in favor of defendant Small Business Administration. On May 13, 1981, it was ordered that the plaintiff's "Notice of Appeal" was being considered as a timely filed Motion for New Trial, but that the Motion was denied.

Being sensitive to the problems faced by *pro se* litigants, it is hereby ORDERED that the "Notice of Appeal" filed by plaintiff on March 13, 1981, and considered by this Court on May 13, 1981, as a Motion for New Trial shall now be considered as a timely filed "Notice of Appeal" from the final order entered March 9, 1981, and from the May 13, 1981, order denying the Motion for New Trial.

It is further ORDERED that the plaintiff's re-

quest to proceed *in forma pauperis* on appeal be referred to the United States Magistrate for his findings and recommendations.

SIGNED this 18th day of May, 1981.

JERRY BUCHMEYER
United States District Judge

U. S. Court of Appeals
FILED
AUG. - 7, 1981
Gilbert F. Ganucheau, Clerk

ITEM 4

U. S. District Court
Northern District of Texas
FILED
AUG. 10, 1981
Joseph McElroy, Jr., Clerk
By S. Smith, Deputy

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNIT A

No. 81-1145 **DOCKETED**

JAMES M. RUTLEDGE,
Plaintiff,

vs. CA 3-79-0780-R

SMALL BUSINESS AAMISTRATION
Defendant.

On Application for Leave to Appeal in Forma Pauperis and On Application for Appointment of Counsel

ORDER:

IT IS ORDERED that petitioner's pro se application for leave to appeal in forma pauperis is denied.

IT IS FURTHER ORDERED that petitioner's pro se application for appointment of counsel to represent him on his appeal is denied.

THURMAN GIBBS, JR.
United States Circuit Judge

A true copy
Test Gilbert F. Ganucheau
Clerk, U.S. Court of Appeals, Fifth Circuit
By Susan Vaughn, Deputy
New Orleans, Louisiana

ITEM 5

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 81-1145
Summary Calendar

DO NOT PUBLISH

JAMES M. RUTLEDGE,
Plaintiff-Appellant,

versus

SMALL BUSINESS ADMINISTRATION
Defendant-Appelee.

Appeal from the United States District Court for the Northern District of Texas

JANUARY 29, 1982

Before GEE, GARZA and TATE, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.

Northern District of Texas
FILED
MAY 13, 1981
JOSEPH McELROY JR., Clerk
By C. Litman, Deputy

ITEM 6

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 81-1145

JAMES M. RUTLEDGE,
Plaintiff-Appellant,

versus

SMALL BUSINESS ADMINISTRATION
Defendant-Appelee.

Appeal from the United States District Court for the Northern District of Texas

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ON SUGGESTION FOR REHEARING EN BANC
(Opinion 01-29-82, 5 Cir., 198_, ____ F.2d ____).
(March 5, 1982)

Before GEE, GARZA and TATE, Circuit Judges.
PER CURIAM:

(X) Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16), the suggestion for Rehearing En Banc is DENIED.

( ) Treating the suggestion for rehearing en banc as a petition for panel rehearing, the petition for panel rehearing is DENIED. The judges in regular active service of this Court having been polled at the request of one of said judges and a majority of said judges not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

THURMAN GIBBS, JR.
United States Circuit Judge

CLERK'S NOTE:
SEE RULE 41 FRAP AND LOCAL RULE 17 FOR STAY OF THE MANDATE

ITEM 7

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
Office of the Clerk

March 15 1982

Mr. Joseph McElroy, Jr.
Clerk
United States District Court
for the Northern District of Texas
1100 Commerce Street, Room 15C22
Dallas, TX 75242

No. 81-1145 — James M. Rutledge
-vs- Small Business Administration
(D.C. No. CA-3-79-0780-R)

☐ Enclosed to you only is a certified copy of the judgment of this Court in the above case issued as and for the mandate.

☒ Enclosed to you only is a certified copy of the Rule 21 Decision in the above case issued as and for the mandate.

☐ The Court having denied the motion for stay of mandate, enclosed to you only is a certified copy of the judgment of this Court in the above case issued as and for the mandate. *See attached notice.*

☐ Having received from the Clerk of the Supreme Court a copy of the order of that Court denying certiorari, I enclose a certified copy of the judgment of this Court in the above case, issued as and for the mandate.

☐ We have received a certified copy of an order of the Supreme Court denying certiorari in the above cause. This Court's judgment as mandate having already been issued to your office, no further order will be forthcoming.

Enclosed herewith are the following additional documents:

☐ Copy of the Court's opinion.

☒ Original record on appeal or review. (1 Volume)

☐ Original exhibits.

☐ Bill of Costs approved by this Court.

☐ Copy enclosed to counsel.

Sincerely,

GILBERT F. GANUCHEAU, Clerk
By: H. E. Adams, Jr.
Deputy Clerk

cc: (Letter Only)
Mr. James M. Rutledge √
Mr. Stafford Hutchinson

ITEM 8

28 U.S.C. § 1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrong mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

ITEM 9

42 U.S.C. § 1981. Equal rights under the law

All persons within the jurisdiciton of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

R.S. § 1977.